

REMARKS

Claims 1, 2, 5, 7, 9-11, 13 and 17 have been amended. The specification has been amended at page 12. These amendments have been made to place them in better form for examination and to further obviate the 35 U.S.C. §§112 and 102/103 rejections as set forth in the Office Action dated April 3, 2002. It is believed none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections are requested.

The Examiner has objected to the specification at page 12 for the blank line in place of the location of the propagating material. Applicant has amended the specification to include this location. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claim 1 and dependent claims 2-18 under 35 U.S.C. §112, first paragraph for enablement. As mentioned on page 12, a deposit of the FL1879 tuber tissue is being maintained until allowance of the claims of the present invention. At that time Applicant will deposit the tissue with ATCC and insert the Accession Number into the amended claim 1. Additionally the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of these rejections is requested.

The Examiner has rejected claims 1, 2, 5, 7, 9-11, 13, 17 and dependent claims 3, 4, 6, 8, 12, 14-16 and 18 under 35 U.S.C. §112, second paragraph as being indefinite. Applicant has amended claims 2, 9, 13 and 17 as suggested by the Examiner. Withdrawal of these rejections is respectfully requested.

Claim 1 and dependent claims 2-18 are rejected under 35 U.S.C. §112, second paragraph as being indefinite in the recitation of a plant by the designation "FL1879". Applicant has amended claim 1 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

Claim 5 is rejected as vague and indefinite in the recitation "having the physiological and morphological characteristics. Applicant has amended claim 5 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

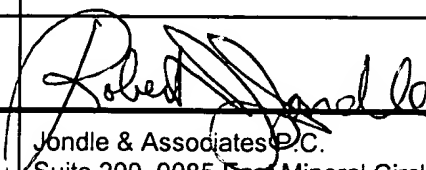
Claim 11 is rejected as indefinite for lacking sufficient antecedent basis. Applicant has amended claim 11. Withdrawal of this rejection is respectfully requested.

Claim 5 is rejected under 35 U.S.C. §102(b) as being anticipated by Cipar. Applicant has amended claim 5 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

Claims 7 and 10 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Cipar. Applicant has amended claims 7 and 10. Withdrawal of this rejection is respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification by the current amendment. The attached page is captioned "**Version with markings to show changes made.**"

In view of the above amendments and remarks, it is submitted that the claim satisfies the provisions of 35 U.S.C. §§102, 103 and 112 and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Robert J. Jondle, Reg. No. 33,915				
SIGNATURE				DATE	August 22, 2002
Address	Jondle & Associates P.C. Suite 200, 9085 East Mineral Circle				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898

Attachments: Marked-Up Copies of Amendments

MARKED UP COPY OF CLAIMS

Please amend claims 1, 2, 5, 7, 9-11, 13 and 17 as shown below:

1. (Amended) A potato tuber designated FL1879, wherein a sample of regenerable cells has been deposited under ATCC Accession No. _____.
2. (Amended) A plant ~~and~~ or its parts, each produced by growing the tuber of claim 1.
- ~~5. Amended) A potato plant having all of the physiological and morphological characteristics of the plant of claim 2.~~
7. (Amended) A potato plant regenerated from the tissue culture of claim 6, said plant having all of the physiological and morphological characteristics of a potato plant having ATCC Accession No. _____.
9. (Amended) A potato plant ~~and~~ or its parts, each produced by growing the seed of claim 8.
10. (Amended) A potato plant regenerated from the tissue culture of the plant of claim 9 said plant having all of the physiological and morphological characteristics of a potato plant having ATCC Accession No. _____.
11. (Amended) A method for producing a hybrid potato seed comprising crossing a first potato plant with a second potato plant and harvesting the resultant hybrid potato seed, wherein said first or second ~~parent~~ potato plant or both said first and second potato plant is the potato plant of claim 2.
13. (Amended) A hybrid plant ~~and~~ or its parts, each produced by growing said hybrid potato seed of claim 12.

17. (Amended) A hybrid plant and or its parts, each produced by growing said hybrid potato seed of claim 16.

MARKED UP COPY OF SPECIFICATION

Please amend the first paragraph on page 12 as follows:

A deposit of the potato variety, FL1879, ~~propagating material~~ tissue is maintained by Frito-Lay, Inc., at _____ the Research Facility in Rhinelander, Wisconsin and University of Wisconsin, Biotron Facility in Madison, Wisconsin. Access to this deposit will be available during the pendency of this application to persons determined by the Commissioner of Patents and Trademarks to be entitled thereto under 37 CFR 1.14 and 35 USC 122. Upon allowance of any claims in this application, all restrictions on the availability to the public of the variety will be irrevocably removed by affording access to a deposit of at least 25 vials of germplasm of the same variety with the American Type Culture Collection, Manassas, Virginia, or another acceptable depository.